

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CACR08-324PATRICK ALLEN PIERCE
APPELLANT

V.

STATE OF ARKANSAS
APPELLEE

Opinion Delivered October 29, 2008

APPEAL FROM THE UNION
COUNTY CIRCUIT COURT,
[NO. CR-2006-0245-1]HONORABLE HAMILTON H.
SINGLETON, JUDGE

AFFIRMED

JOSEPHINE LINKER HART, Judge

Patrick Allen Pierce appeals his conviction in a jury trial of residential burglary and first-degree terroristic threatening, with a sentence enhancement engendered by the use of a firearm. For these convictions he received consecutive sentences in the Arkansas Department of Correction totaling thirty-one years. On appeal, he argues that the trial court erred in allowing hearsay testimony in violation of his rights under the Confrontation Clause of the United States Constitution. We find the error to be harmless beyond a reasonable doubt and affirm.

The State concedes that the trial court's evidentiary ruling was indeed a violation of Pierce's rights under the Confrontation Clause. It, however, asserts that the error was harmless beyond a reasonable doubt. That will therefore be our focus. In *Sparkman v. State*, 91 Ark. App. 138, 208 S.W.3d 822 (2005), this court first applied harmless-error analysis to a case where a trial court admitted testimonial hearsay in violation of the Confrontation Clause. There we found applicable certain factors first adopted by the supreme court in *Winfrey v. State*, 293 Ark. 342, 738 S.W.2d 391

(1987), when that court determined that a Confrontation Clause violation would not require “automatic reversal.” These factors include, “the importance of the witness's testimony, whether the testimony was cumulative, whether evidence existed that corroborates or contradicts the testimony of a witness, and the overall strength of the prosecution’s case.” *Id.*

At issue in this case is the testimony of El Dorado Police Lieutenant Jim Wade. He recalled his interview with Helen Lewis, a neighbor of the alleged victim in this case. Ms. Lewis had passed away, prior to the trial. Lieutenant Wade testified that, in an April 18, 2006, statement, Ms. Lewis told him that she was familiar with Pierce and the vehicle that he often drove. She further stated that, on “the day of the alleged incident,” she had observed that vehicle, a small silver pick-up truck, parked in the area of the victim’s apartment. On cross examination, however, Lt. Wade admitted that Ms. Lewis neither actually saw Pierce nor the alleged “disturbance.”

In addition to Ms. Lewis’s testimony, the State also presented testimony of several other witnesses who covered the same information provided by Ms. Lewis. Amy Smith, the alleged victim, testified about the presence of Pierce and the silver pickup at her apartment on the day in question. Candy McMurry, a neighbor who lived in an apartment beneath Smith, testified that she heard screaming, then observed Pierce descending the stairs outside her apartment. She watched him get into a silver pickup truck and recorded the license-plate number. Two other witnesses, Shemikia Williams, who lived next door to Smith, and Latoya Miller, who lived directly beneath Smith, testified that they heard the alleged incident on the day in question.

Guided by our evaluation of the *Winfrey* factors, we conclude that the erroneous admission of Ms. Lewis’s statement was harmless beyond a reasonable doubt. Regarding the importance of her statement, we acknowledge that it did no more than place a vehicle that she knew Pierce frequently

drove at the apartment complex on the day in question. Nonetheless, we acknowledge that it was of some importance because Pierce's presence was otherwise established only by witnesses who were either the alleged victim or her friends. However, the evidence that Ms. Lewis's statement represents was neither the most comprehensive evidence on the issue nor the "best" proof of Pierce's presence in the apartment complex on the day in question. *Cf. Seaton v. State*, 101 Ark. App. 201, --- S.W.3d ---- (2008) (reversing admission of testimonial hearsay that was "was more probative on the point than any other that the State could procure through reasonable means"). Regarding whether it was cumulative, we note that two other witnesses, the alleged victim and downstairs neighbor, Candy McMurry, testified to the same information. As far as other evidence that corroborates or contradicts Ms. Lewis's testimonial statement, there is nothing in the record that contradicts her observation that Pierce's truck was present on the day in question, while there is other testimony that corroborates her statement. *See Sparkman v. State*, 91 Ark. App. 138, 208 S.W.3d 822 (2005). Finally, the overall strength of the prosecution's case, at least from the standpoint of whether there was an altercation between Smith and Pierce, appears to be extremely solid. We cannot conclude, as we recently did in *Lee v. State*, 102 Ark. App. 23, --- S.W.3d ---- (2008), where we reversed a trial court's admission of testimonial hearsay, that without Ms. Lewis's statement, the case against Pierce is "decidedly weaker."

Affirmed.

GLADWIN and HEFFLEY, JJ. agree.